No. 25794 - Lawyer Disciplinary Board v. Arch A. Moore, Jr., a former member of The West Virginia State Bar

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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Davis, J., concurring:

In this disciplinary proceeding, the Court has denied Mr. Moore's petition for reinstatement of his law license. I fully concur in this decision and all aspects of the meticulously documented opinion. I have chosen to write separately to underscore a few matters that I find to be important.

A. Admission of Past Wrongdoing is Essential for Reinstatement

In the recent case of *Lawyer Disciplinary Board v. Hey* (No. 28239, October 10, 2003),[1] I dissented from the majority's decision to reinstate the law license of John Hey. The proceeding against Mr. Moore is no different than that of the proceeding against Mr. Hey. Both Mr. Hey and Mr. Moore pled guilty to criminal charges and both petitioners refused, in reinstatement proceedings, to acknowledge their role in committing the crimes to which they pled guilty. I believe it is this Court's duty to the public and the bar to deny reinstatement of a law license when there is no admission to and acceptance of responsibility for the conduct which caused disbarment. *See* Syl. pt. 4, in part, *In the Matter of Dortch*, 199 W. Va. 571, 486 S.E.2d 311 (1997) ("When assessing the moral character of an applicant

[1]This case was disposed of by a memorandum order.

whose background includes a criminal conviction, the following factor[] should be considered: . . . The applicant's current attitude about the prior offenses (e.g., acceptance of responsibility for and renunciation of past wrongdoing, and remorse[.]").

The record in Mr. Hey's case revealed laudable post-disbarment conduct by him. Similarly, the record in Mr. Moore's case evidenced commendable post-disbarment conduct. However, a critical factor in my dissent in Mr. Hey's case was that "the record d[id] not demonstrate that [Mr. Hey] has accepted responsibility for his actions. By his own admission, he pled guilty to criminal charges only to preserve his pension."

In the instant proceeding, the majority opinion found that Mr. Moore previously "engaged in extremely serious misconduct, misconduct showing a willingness—on a sustained and knowing basis—to be dishonest, to deceive, to conceal the truth, and to bend, manipulate, and violate the law—for personal and professional gain." In denying Mr. Moore's petition for reinstatement of his law license, the majority opinion concluded that Mr. Moore's "continued denial of wrongdoing has forced this Court to give substantial attention and weight to the proven, serious, criminal misconduct for which he was originally disbarred—conduct that he admitted under oath, in statements that he now says—under oath—were lies."

If this Court reinstated Mr. Moore's license we would, in effect, be exonerating

him from all guilt for the crimes to which he pled guilty. This result is the real motivation behind Mr. Moore's protestations of innocence. He seeks to use reinstatement of his law license as material support for his preposterous claim of innocence of the crimes to which he pled guilty. Fortunately, this Court has declined the invitation to be an "image maker" and correctly denied Mr. Moore's petition for reinstatement—I only wish the Court had also had the wisdom to resist this temptation in its resolution of Mr. Hey's case.[2]

B. Ethics Expert Ignored Ethics Precedent

The final point I have to make involves "[t]he list of well-respected members of the West Virginia Bar . . . who have lent their names to the petition for reinstatement[.]" I find it rather disheartening to know that among the supporters for Mr. Moore's reinstatement was a member of the Bar who proclaims to be an expert in ethics. Although I understand our legal system is comprised so that a party can obtain a "hired gun" to say anything in litigation, lawyer disciplinary proceedings have no place for this type of advocacy.

In a letter to this Court supporting Mr. Moore's reinstatement, the expert stated that "Governor Moore has accepted responsibility for the actions which resulted in the loss of his

[2]By denying Mr. Moore's petition for reinstatement in the case *sub judice*, while nevertheless granting reinstatement to Mr. Hey, this Court has sent the message that crimes perpetrated for financial gain are more egregious than crimes against women. I find this blatant disregard for the treatment of women in this State to be barbaric and reprehensible.

law license. . . ." Additionally, the expert explained

> [m]y experience as a teacher of legal ethics, a frequent lecturer on the subject for CLE organizations throughout the country, and as an expert witness in legal ethics cases in West Virginia and a dozen other states leads me to the firm conclusion that, in this case, reinstatement to the practice of law is not only appropriate but highly desirable.

The majority opinion in this case has aptly demonstrated that Mr. Moore has not accepted responsibility for his unlawful actions that led to his disbarment. Thus, in order to support Moore's reinstatement, this ethics "expert" had to ignore not only the true and well documented facts of this case, but also the established law of this jurisdiction. *See, e.g.,* Syl. pts. 1, 2 & 3, *In re Brown*, 166 W. Va. 226, 273 S.E.2d 567 (1980) (establishing standards for reinstatement). *See also* Syl. pt. 3, *Committee on Legal Ethics v. Roark*, 181 W. Va. 260, 382 S.E.2d 313 (1989) ("Ethical violations by a lawyer holding a public office are viewed as more egregious because of the betrayal of the public trust attached to the office.").[3] To borrow from the comments of a former West Virginia Law School Professor of Ethics, I am certain Mr. Moore's expert would not relish trying "to explain [his position in] this case to

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[3]To adopt the view championed by this proponent of Mr. Moore, this Court would be required to disregard the doctrine of *stare decisis*. *See Mahew v. Mahew*, 205 W. Va. 490, 499, 519 S.E.2d 188, 197 (1999) ("'Stare decisis is the policy of the court to stand by precedent.' *Banker v. Banker*, 196 W. Va. 535, 546 n.13, 474 S.E.2d 465, 476 n.13 (1996)). There are simply no grounds in this case to warrant such disregard. *See Woodrum v. Johnson*, 210 W. Va. 762, 766 n.8, 559 S.E.2d 908, 912 n.8 (2001) ("'*Stare decisis* is not a rule of law but is a matter of judicial policy . . . It is a policy which promotes certainty, stability and uniformity in the law. It should be deviated from only when urgent reason requires deviation. . . . In the rare case when it clearly is apparent that an error has been made or that the application of an outmoded rule, due to changing conditions, results in injustice, deviation from that policy is warranted.'" (quoting *Dailey v. Bechtel Corp*., 157 W. Va. 1023, 1029, 207 S.E.2d 169, 173 (1974) (additional citations omitted)).

a roomful of law students." Jack Bowman, *Contingent Fee Case Defied Explanation*, The State Journal, October 24, 2003, at 39.

The integrity of our legal system simply cannot tolerate "hired gun" advocacy in lawyer disciplinary proceedings. The position taken by Mr. Moore, in his quest for reinstatement, tramples upon fundamental principles of ethics. In spite of the clear ethical flaw in Mr. Moore's position, he successfully found a purported ethics expert to support his position. This is troubling to me. This Court has an uncompromising duty to make certain that honest and morally upright persons are representing the legal affairs of the public. To that end, "hired gun" proponents have no place in lawyer disciplinary proceedings.

In view of the foregoing, I concur. I am authorized to state that Judge Pancake joins me in this concurring opinion.